

N.D.A.G. Letter to Eiken (July 1, 1986)

July 1, 1986

Mr. Douglas Eiken
Director
North Dakota Parks and Recreation Department
Pinehurst Office Park
1424 West Century Avenue
Suite 202
Bismarck, ND 58501

Dear Mr. Eiken:

Thank you for your letter of June 2, 1986, concerning the use of the snowmobile trail tax fund.

N.D.C.C. § 39-24-05 states as follows:

39-24-05. DISPOSITION OF REGISTRATION FEES. Fees from registration of snowmobiles shall be deposited with the state treasurer and credited to the motor vehicle registrar fund. The snowmobile trail tax shall be deposited in a state snowmobile fund in the state treasury. The state parks and recreation department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of establishing snowmobile facilities.

I am assuming from your letter that you are asking whether trails developed for use with moneys from the snowmobile trail tax fund, which consists of snowmobile registration fees, must be used exclusively as snowmobile facilities.

The language of N.D.C.C. § 39-24-05 and the legislative intent, gleaned from the minutes of the standing committee discussion of House Bill 1148 during the 1977 Legislative Assembly and House Bill 1098 during the 1979 Legislative Assembly, seem to indicate that these funds are to be used primarily for snowmobiling purposes. For example, Gary Leppart, director of the State Park Service and a proponent of House Bill 1148 stated, "[T]he fee would be dedicated funds for snowmobile use only." Mr. Leppart also said, "[W]e would work through the state snowmobile association." Hearings on House Bill 1148 before the House Transportation Committee, 45th Legislative Assembly, January 13, 1977. In 1979, Tim Mueller of the North Dakota Parks and Recreation Department, in response to a question about whether the appropriations would be for specific projects, said, "[T]he funding would be made through our department and we would be working with the snowmobile clubs." Hearings on House Bill 1098 before the House Natural Resources Committee, 46th Legislative Assembly, January 11, 1979.

As I understand it, some of these trails are located on state-owned land, in state parks, and some are located on privately owned land. In regard to those located on state park land, the provisions of N.D.C.C. Ch. 55-08 apply.

N.D.C.C. § 55-08-03 states, in part, as follows:

55-08-03. DUTIES -- POWERS -- LIMITATIONS --PENALTY. The director of state parks and recreation shall be the administrative and executive head of the department. Subject to the provisions hereof and other applicable laws, he shall have the following powers and duties:

1. The director and his authorized agents and employees shall have charge and control full powers of management over all state parks, state campgrounds, state recreation areas and reserves of the state, including, but not limited to, site selection and planning, setting of fees and charges, setting hours and seasons of operation, regulating the conduct of guests and visitors, employment and bonding of personnel, compensation of employees, acquisition, construction, reconstruction, betterment, improvement, operation, and maintenance of facilities, and promotion of wide utilization of and the use, sale, leasing, and disposition of facilities and of all records pertaining to the performance of his functions relating thereto.
8. The director shall have the power to make and enforce suitable rules and regulations relating to the protection, care, and use of any state park, state campground, state recreation area, or reserve, and the violation of any such regulation shall constitute an infraction. (Emphasis supplied.)

In regard to those snowmobile trails located on state park land, campgrounds, recreation areas, and reserves, whether owned or leased by the North Dakota Parks and Recreation Department, the director has authority to allow other uses of the trails, not conflicting or inconsistent with snowmobile use (i.e., all-terrain vehicle use). To restrict the trails to only snowmobile use would be under utilization of facilities and makes little sense. Of course, care should be taken that other uses of the facilities do not cause damage to the trails of such a nature which would render them unusable by snowmobilers. Also, trail maintenance primarily of benefit to other users, such as all-terrain vehicles, to the detriment or exclusion of snowmobiles, would be prohibited.

In regard to snowmobile trails on privately owned land, where trails are operated pursuant to lease agreements (which essentially provide for an easement for snowmobile use) with moneys from the snowmobile trail fund, the restrictions of N.D.C.C. §39-24-05 are not tempered by the director's authority found in N.D.C.C. §55-08-03. Fund moneys can only be used to establish snowmobile facilities. However, there is nothing contained in the

language of N.D.C.C. § 39-24-05 or its legislative history that indicates that the facilities established with fund moneys cannot also be used by other nonconformist vehicles or activities. In fact, if private landowners desire and require that new leases also allow other uses, such as all-terrain vehicles, such new leases may be "necessary for purposes of establishing snowmobile facilities" under N.D.C.C. § 39-24-05. Additionally, it appears that there is no additional request for fund moneys. Instead, there is simply a request that new leases allow other uses. Even if new expenditures of fund moneys were required, I believe the allowance of other non-inconsistent uses would not be prohibited by N.D.C.C. § 39-24-05.

In short, the director of the North Dakota Parks and Recreation Department has authority to promote wide utilization of facilities under his control. Furthermore, allowing all-terrain vehicle use and other noninconsistent uses on state land and private land does not violate the spirit and intent of N.D.C.C. § 39-24-05. Of course, allowing other uses on snowmobile trails established with fund moneys during the snowmobiling season which would conflict with snowmobile use would be prohibited.

Sincerely,

Nicholas J. Spaeth

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